IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 5157 OF 1997 and W.P. NO. 6212 OF 1998 and W.P. NO. 5347 OF 1999
AND
W.M.P. NO. 7824 OF 1999

W.P. NO. 5157 OF 1997

1. T. Guruswamy
2. T. Anbalagan .. Petitioners

- Vs -

1. The Asst. Health Officer-I
Municipal Corporation of Madras
I-Circle, T.H. Road
Madras 21.

2. The Municipal Corporation
of Madras, rep. by its
Commissioner, Ripon Buildings
Part Town, Madras 3.

3. P.A. Natarajan .. Respondents
(R3 impleaded as per order
of Court dated 22.7.97
made in WMP No.15706/97)

W.P. NO. 6212 OF 1998

1. T. Guruswamy .. Petitioner

- Vs -

1. The Asst. Health Officer-I
Municipal Corporation of Madras
I-Circle, T.H. Road
Madras 21.

2. The Municipal Corporation
of Madras, rep. by its
Commissioner, Ripon Buildings

Part Town, Madras 3.

3. P.A. Natarajan .. Respondents
(R3 impleaded as per order
of Court dated 7.8.98
made in WMP No.14535/98)

W.P. NO. 5347 OF 1999

1. T. Guruswamy .. Petitioner

- Vs -

1. The Asst. Health Officer-I
Municipal Corporation of Madras
I-Circle, T.H. Road
Madras 21.

2. The Municipal Corporation
of Madras, rep. by its
Commissioner, Ripon Buildings
Part Town, Madras 3.

3. The Asst. Revenue Officer
Revenue Department
Corporation of Chennai
Chennai 600 003. .. Respondents

W.P. No.5157 of 1997 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorari as stated therein.

W.P. No.6212 of 1998 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Declaration as stated therein.

W.P. No.5347 of 1999 filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.

!For Petitioners : Mr. P.R.Selvaraj

^For Respondents : Mrs. P.Baghyalakshmi

:COMMON ORDER

1. The two petitioners in W.P. No.5157 of 1997 have jointly prayed for the issue of a writ of certiorari calling for the records of the Asst. Health Officer, Zone-1 relating to his order dated 19.3.97 and quash the same.
2. In W.P. No.6212 of 1998, the petitioner, who is the petitioner in W.P.

No.5347/99 and first petitioner in W.P. No.5157/97, has prayed for the issue of Writ of Declaration declaring that the petitioner's trade or business being carried on in premises at No.8, Solaiappan Street I Lane, Old Washermanpet, Madras 21, is lawful for the period from April 1998 to March 1999 in view of the deeming provisions of Section 365 Cl. (10) of The Madras City Municipal Act.

3. In W.P. No.5347 of 1999, the petitioner herein, who is also the first petitioner in W.P. No.5157/97 has prayed for the issue of Certiorarified Mandamus calling for the records pertaining to the communication No. R.D.C.L.B. No.6327/99 dated 19.3.1999 of the 3rd respondent and quash the same and direct the respondents to renew the licence for the period 1999 to 2000 after receiving the returned application form along with the D.D., and, thereafter, pass such further or other orders.

4. W.P. Nos.5157/97 and 6212/98 has been admitted, while W.P. No.5347 /99 is at the stage of notice of motion. With the consent of counsel on either side, the writ petitions are taken up for final disposal. Heard Mr.P.R.Selvaraj, learned counsel appearing for the petitioner and Ms.P.Baghyalakshmi, learned standing counsel appearing for the Chennai Corporation and Mr.Achuthan, learned counsel appearing for the 3rd respondent.

5. It is sufficient to refer to the facts in W.P. No.5157/97. The writ petitioners jointly applied to the Commissioner, City Municipal Corporation for grant of licence to install dhal processing unit at No.8, Solaiappan 1st Lane, Old Washermenpet, Chennai 21. After following the procedure prescribed and on remitting the fees prescribed and there being no objection, a licence was issued on 9.1.92 to install 15 +15+5+3+2 aggregating to 40 HP for a dhall mill under Section 287 of The Madras City Municipal Corporation Act, 1999, for the year ending with 31st March 1992. The said licence has been renewed annually up to 1996-97. Only a minimum of 2 to 15 HP or on an average 10 HP alone is being utilised and not the entire 40 HP. There are four identical dhall processing mills in and around the petitioner's premises and the dhall mills in and around a radius of 100 Mts., are also using the same power load under valid licence granted by the Corporation. There are 20 similar dhall mills and two rice mills around the petitioner's premises within a radius of 200 Mts. The flour mill is located on the next door on the eastern side using 10 HP.

6. The dhall processing is a registered small scale unit. It is a dust and noise free unit. The Pollution Control Board has also issued necessary no objection certificate. The unit is so designed to convey the dust through the pipeline, which is directly left into the water drains and, therefore, there is no chance for dust or sound pollution from the petitioner's mill. The petitioner has invested substantial sum in the unit.

7. W.P. No.18364/93 was filed by one Natarajan as a Public Interest Litigation to forbear the Electricity Board from providing more than 5 HP electricity connection to the petitioner's unit. This Court declined to pass interim orders.

8. The Assistant Health Officer, Corporation of Madras, sent a notice dated 4.3.94 alleging that the petitioners' are using 40 HP for husking grain. The petitioner is not allowed to use more than 5 HP in the residential zone and any load in excess of 5 HP should be removed failing which the petitioner will have to face prosecution under Section 92-B of The Tamil Nadu Public Health Act. The neighbours have no objection for the running of the dhall mill. The

dhall mill is not a offensive trade in terms of Section 89 of The Madras City Municipal Corporation Act and there is no scope for nuisance and, therefore, Section 92-B has no application. By the said notice, the Assistant Health Officer sought to invalidate the licence granted by the Commissioner. In respect of others no action has been taken. No show cause notice has been issued to the petitioner affording an opportunity to explain the effect. After having granted a licence and allowed the dhall mill to function for years together, it is not open to the respondents to take such an action and this is arbitrary.

9. The petitioner filed W.P. No.4755/94 to quash the said show cause notice. The said Natarajan also filed W.P. Nos1836/93 and 16075/94. All the three writ petitions were taken up together and this Court directed the respondents to consider afresh, while directing maintenance of status quo.

10. In terms of the said order, the petitioner submitted a representation and explanation. The petitioner also requested for personal hearing. Despite directions issued by this Court and despite representation submitted, no action has been taken. The petitioner also applied for renewal of the licence. The respondents have refused to renew the licence for the period 1997-98. Reminders were submitted.

11. By letter dated 19.3.97, the Assistant Health Officer intimated the petitioner that the Commissioner of Corporation has revoked/ cancelled the licence of the petitioner suo motu and, therefore, the petitioner has to stop the mill immediately. According to the petitioner no proceedings of the Commissioner has been served nor a copy of the Commissioner's proceedings has been enclosed with the intimation served by the Assistant Health Officer. While reserving the right to challenge the proceedings of the Commissioner, the petitioners filed W.P. No.5157/97 challenging the proceedings of the Assistant Health Officer dated 19.3.97, which is purported to have been issued on the basis of the orders passed by the Commissioner on 13.2.97.

12. W.P. No.5347/99 has been filed by the first petitioner in W.P. No.5157/97 seeking for the relief of certiorarified mandamus calling for the proceedings of the 3rd respondent Assistant Revenue Officer in returning the application submitted by the petitioner along with fee on the ground that the said licence has already been revoked.

13. W.P. No.6212/98 has been filed by the first petitioner in W.P. No.5157/97 seeking for a declaration that the dhall mill run by the petitioner at No.8, Solaiappan 1st Lane, Old Washermenpet, Chennai 21, is lawful for the period April 1998 to March 1999 in view of the deeming provision of Section 365 (10) of The Madras City Municipal Corporation Act.

14. In the latter two writ petitions, identical facts have been set out while adding certain subsequent events and it is not necessary to refer to the same.

15. In W.P. No.5157 of 1997, a counter has been filed on behalf of the respondents by the Commissioner stating that for a dhall mill or flour mill, licence should be obtained under Section 287 of The Chennai City Municipal Corporation Act, 1999. Various areas of the city of Chennai is classified as either primary residential zone or mixed residential zone or commercial zone, etc. Section 47 of The Town and Country Planning Act, prescribes the user of such areas to be in conformity with the development plan. The Chennai Metropolitan Development Authority has framed the Chennai Metropolitan Development Control Rules. In terms of Rule 7, the activities carried on in an area shall be in conformity with the classification. The area where the

petitioner has located the dhall mill is a primary residential zone and, therefore, the dhall mill is not permissible under the development control rules.

16. Door No.8, Solaiappan 1st Lane, Old Washermenpet, Chennai 21, falls under the primary residential zone. The petitioner obtained licence to run dhall mill for the year 1991-92 and the same was renewed subsequently on suppression of material facts by the writ petitioner.

17. Mr.Natarajan, a neighbour of the writ petitioner made representations as the dhall mill is a source of nuisance to the residents. A complaint was lodged and investigated. A show cause notice was issued under Section 92-B of The Tamil Nadu Public Health Act to stop the trade. Challenging the same, the petitioner filed W.P. No.4755/94, while the said Natarajan also filed W.P. No.16075/94 seeking for a direction to the Commissioner, Corporation of Chennai to take action against the writ petitioner for running dhall mill in a primary residential zone with 40 HP motor. Both the writ petitions were taken up together and this Court directed the Corporation to hear the petitioner personally.

18. The first petitioner was called upon to appear by letter dated 24 .10.96. Both the petitioners appeared and submitted their explanation. After hearing, the Commissioner of Corporation in his note to the Health Officer has noted that the dhall mill located in a primary residential area is serious threat to public health and is a nuisance and a show cause notice be served to the petitioner directing to show cause within fifteen days, failing which the licence will be revoked. The petitioner challenged the show cause notice by filing W.P. No.4 755/94. The petitioner in W.P. No.16075/94 was served with a notice of hearing on 4.2.96. Thereafter, on 13.2.97, the 2nd respondent revoked the licence granted to the petitioner, which was communicated to the first respondent and the same is being challenged. The respondents have acted as per the directions of this Court dated 17.7.96 made in W.P. Nos.4755/94 and 16075/94 and after affording opportunity, the order impugned was passed.

19. It is the duty of the Assistant Health Officer to abate nuisance to the public. Installation of 40 HP motor is a source of nuisance to the public due to its noise and vibration. In respect of other four dhall mills, they are not a source of nuisance and there are no complaints. Complaints were received from the neighbour Natarajan and action was taken.

20. In terms of the provisions of the City Municipal Corporation, Commissioner has the power to delegate his powers to his subordinates and it is the duty of the subordinates to act on behalf of the Commissioner. There is no illegality in the order passed by the first respondent. The order of the Commissioner dated 13.2.97 is valid. The licence has been validly revoked. That apart, the licence has already lapsed on 31.3.97. No licence has been granted for the period subsequent to 1.4.97. Therefore, the petitioner is not entitled to any relief and the writ petitions are liable to be dismissed.

21. Subsequently in W.P. Nos.5157/97 and 6212/98, a common counter has been filed by the Commissioner of Corporation, wherein it has been reiterated that as per the directions of this Court dated 17.7.96 made in W.P. No.18362/93, etc., the writ petitioner submitted his objections, reasonable opportunity was afforded to attend the enquiry on 25 .10.96, statements were recorded, that the site was inspected by the Assistant Health Officer and only thereafter, by order dated 13.2.97, the Commissioner directed the Health Officer to revoke

the licence for violation of licence conditions. The respondent has also referred to certain other pending proceedings as well as sealing of the petitioner's dhall mill and removal of the seal by subsequent orders. Final orders or proceedings was revoked and it was served on the writ petitioner on 20.3.97. The contempt application filed by the petitioner came to be dismissed on 18.1.98. The various averments set out in the affidavit are false, untrue, incorrect and the contentions are devoid of merits.

22. According to the respondents, the petitioner is not entitled for grant of any licence or renewal thereof to run a dhall mill with 40 HP electric motor at No. 8, Solaiappan 1st Lane, Old Washermenpet, Chennai 21, for the following reasons :-

"i) The said area is located in a "Primary Residential Zone".

ii) The licence if granted would be in contravention of Rule 7 of CMDA rules.

iii) There are number of complaints/objection raised from the local residents of that area.

iv) Due to operation of Mill with 40 H.P. Motor, Noise Pollution is created and dust pollution is also caused creating nuisance and health hazards to the resident of that area.

v) The petitioner is running the dhall mill in violation and in contravention of Section 92 of the Tamil Nadu Public Health Act, 1939.

vi) As per Rule 10(a)(iii) Annexure VII of the Development Control Rules, Dhal Mills are permitted only in Light Industrial Zone. Hence, the claim of the petitioner to run a Dhal Mill in the Primary Residential Zone is to be summarily rejected.

vii) Since, the said lane is a dead end and the customers to the Mill bring the stock in heavy vehicles such as lorry and truck, there exists heavy traffic congestion creating grave nuisance and pollution to the general public at large in that area."

Hence the respondents pray for dismissal of the writ petitions.

23. A separate counter has also been filed in W.P. No.6212/98 as well as in W.P. No.5157/97 reiterating the same stand.

24. Heard Mr. P.R.Selvaraj, learned counsel appearing for the writ petitioner and Mrs.Baghyalakshmi, learned counsel appearing for the respondents. With the consent of either side, the main writ petitions are taken up for final disposal.

25. Mr.P.R.Selvaraj, learned counsel appearing for the petitioner contended that despite earlier directions issued by this Court, despite the petitioners making their submissions and taking part in the personal hearing, no orders have been passed and without orders passed by the Commissioner, the Assistant Health Officer has passed the impugned proceedings, which is illegal and without jurisdiction. At any rate, in the absence of any orders passed by the Commissioner, in terms of the earlier directions issued by this Court, the order impugned is arbitrary and illegal. The learned counsel also referred to the directions issued by Ali Mohammed, J., (as he then was), in a batch of writ petitions.

26. Per contra, Mrs.P.Baghyalakshmi, learned counsel appearing for the respondent Corporation contended that the petitioners are not entitled to any relief and the various contentions advanced by the petitioners are devoid of merits.

27. Mr.Selvaraj, learned counsel also contended that at any rate the respondents should have passed a speaking order and without passing a speaking

order, the licence could never be revoked nor the renewal could be refused. Such an action is illegal, arbitrary and violative of Article 14 of The Constitution.

28. Mr.Selvaraj, learned counsel for the petitioner challenged that no orders has been passed by the Commissioner. Hence, this Court directed the standing counsel for the Corporation to produce the file, besides directing the Assistant Health Officer to appear before this Court with the file on various dates. Ultimately, the Assistant Health Officer also appeared before the Court. The present Assistant Health Officer appeared before the Court after few adjournments and the file was traced and produced before the Court.

29. The points that arise for consideration in these writ petitions are :-

"i) Whether the petitioner is entitled to the writ of certiorari to quash the impugned proceedings ?

ii) Whether the petitioner is entitled for a declaration as prayed for ?

iii) Whether the revocation of licence and refusal to renew the licence to the petitioner's dhall mill is arbitrary, illegal, violative of principles of natural justice and violative of the statutory provisions of the City Municipal Corporation Act ?

iv) To what relief, the petitioners are entitled to ?"

30. Before referring to further facts, it is essential to refer to the order passed by Ali Mohammed, J., (as he then was) in W.P. No.14830 /95 and 2008/95 dated 12.3.96 (MADRAS CITY FLOUR MILLS OWNERS ASSOCIATION VS. THE CORPORATION OF MADRAS & OTHERS). Ali Mohammed, J., (as he then was), after hearing both the sides and recording the representation made on behalf of the Corporation, issued the following directions :-

"9) In the instant case, the learned counsel for the Corporation of Madras, Mr.Murugesan submits that the Corporation will take effective steps to enforce the provisions of Section 287 of the Madras City Municipal Corporation Act, 1919, and also take steps under Section 379A of the Act and no permission will be granted if the owners of the flour mill who do not comply with the Tamil Nadu Town and Country Planning Development Control Rules with regard to the classification of the zones and in particular regarding primary residential zone given under the Rules. The statement of the learned counsel for the Corporation of Madras, is recorded and no further orders are required in W.P.No.14838 of 1995.

10) With regard to W.P.No.2008 of 1995, the prayer of the petitioner has to be dismissed as it is well settled that no writ of mandamus will be issued when there is no violation of any statutory provisions. The petitioner's prayer is only to direct the respondents not to enforce Section 287 of the Madras City Municipal Corporation Act, 1919, and the Development Control Rules, which the petitioner, in law, is not entitled to. Accordingly, W.P.No.2008 of 1995 is dismissed.

11) In view of the above, the first respondent-Corporation of Madras is directed to issue notices to all the owners of the flour mills including all the members of the respective petitioner-Associations in the above writ petitions who have not complied with the provisions of Section 287 of the Madras City Municipal Corporation Act, 1919 and the Rules made thereunder and have not obtained the licence and also those owners of the flour mills who have obtained licence and whose flour mills are situated in a primary residential zone under Development Control Rules for Madras Metropolitan Area made under the Tamil Nadu Town and Country Planning Act, 1971 and after giving

adequate opportunity to the concerned owners of the flour mill, the first respondent Corporation shall pass orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. Writ Petitions are ordered accordingly. No costs. Consequently, W.M.P.Nos.3177 and 14838 of 1995 are closed."

31. Ali Mohammed, J., (as he then was) has gone into the matter exhaustively and issued the said directions. The said directions issued by Mohammed, J., (as he then was) will also apply to other cases like the petitioner's dhall mill or rice mill or other industries located in zones, where such industries are not permitted.

32. It is also brought to the notice of this Court that the respondent Corporation prosecuted the petitioners before the 19th Metropolitan Magistrate, Chennai, in NMSTC No.2623 of 1994. The Judicial Magistrate ultimately discharged the petitioners under Section 255 of The Code of Criminal Procedure, while holding that the Corporation has failed to establish the charge. The same is also being relied upon by the counsel for the petitioner.

33. Further, it may not be necessary to refer to all other details or controversies, which is sought to be highlighted by either side in the light of the order which this Court proposes to pass. Jayarama Chouta, J., (as he then was), in W.P. Nos.18362/93, 4755/94 and 16075/9 4, NATARAJAN VS. TNEB & OTHERS filed by Natarajan as well as by the petitioners herein, by a common order dated 17.7.96, after hearing either side as well as the standing counsel for the Electricity Board and the City Municipal Corporation, passed the following order :-

"8. The learned Advocate appearing for the Corporation submitted that the Corporation has issued notices to the petitioners in W.P. No.475 5 of 1994 under Section 92 (B) of the Tamil Nadu Public Health Act and it is in the nature of the show cause notice asking them to submit their explanations and if they furnished the explanation, they will be considered in accordance with the law on their own merits. Since the notices issued to the petitioners in W.P. No.4755 of 1994 are in the nature of show cause notices calling upon them to show cause to the notice issued by the Corporation, it is open to the petitioners in the said Writ Petition 4755 of 1994 to offer their explanations within a period of four weeks from the date of receipt of a copy of this order and, thereafter, with a period of four weeks the corporation will consider the said explanations and dispose of these explanations after giving opportunity not only to the petitioners in W.P. No.4755 of 1994 but also to the petitioner in W.P. No.18362 of 1993. till the disposal of the said matter by the respondents, the status quo as on today should be maintained. As a special case, I direct the Corporation to hear the petitioners in W.P. No.4755 of 1994 and the petitioner in W.P. No.16075 of 1994 personally. With the above observations, these writ petitions have been disposed of."

34. Pursuant to the above directions, it is admitted that the writ petitioners made representation, there was an oral hearing also, certain statements were also recorded, besides there was inspection by the Assistant Health Officer. To this extent there is no controversy. It is the contention of Mr.Selvaraj, learned counsel for the petitioner that no orders have been passed by the Commissioner as directed by this Court and without an order either being passed or being communicated, the Assistant Health Officer has passed the impugned proceedings, which is arbitrary, illegal, violative of

principles of natural justice, besides being violative of the directions issued by this Court.

35. As it was challenged that no orders have been passed by the Commissioner and that the Assistant Health Officer alone has passed the orders, this Court insisted for production of the original file. After several adjournments the original file was produced before the Court. The original file, it is represented by the learned counsel for the respondents was traced and produced with very great difficulty and produced.

36. A perusal of the file would show that on 8.1.97 the Assistant Health Officer submitted a note to the Commissioner, setting out few facts and requested the Commissioner of Corporation through proper channel to revoke and cancel the licence for the dhall mill located at No.8, Solaiappan 1st Lane, Old Washermenpet, Chennai 21, for the year 19 96-97. The file, as seen from the endorsements or signatures, it was forwarded to the Zonal Officer-I, then the Health Officer, the Deputy Commissioner (Health). The file reached the Commissioner's office on 12.2.97. The Commissioner on the said file, while considering the request submitted by the Assistant Health Officer has endorsed thus :-

"Please cancel as per law" - Initialed - Commissioner."

37. There is no controversy that an enquiry was conducted on 24.10.96 and statements of the first petitioner was recorded. The impugned order dated 19.3.97 merely intimated the petitioner that the licence granted in favour of the petitioner for running a dhall mill has been revoked and cancelled by the Commissioner for the year 1996-97. There is a reference to the order of the Commissioner dated 13.2.97. The order of the Commissioner referred to by the Assistant Health officer dated 13.2.97 reads thus :-

"Please cancel as per law" - Initialed - Commissioner."

38. It is useful to extract the entire note put up by the Assistant Health Officer before the Commissioner and the orders passed thereof. The note and the orders passed reads thus :-

"A.H.O.I.C.No.A1/08/97 The Asst.Health
Officer I
Corporation of
Chennai
Date : 8.1.97

NOTE FOR COMMISSIONER

Sub : Running of 40 H.P. Dhall Mill at No.8, Solliappan Street, Ist Lane, Chennai-21 - complaint received action taken as per the Court order - report submitted - reg.

Ref: 1. Court order W.P.No.4755/94 and W.P.No.16075/94 order dated 1 7.7.96

2. Legal cell No.4069

3. Intimation for hearing of both the parties letter dated 24.10.9 6 as per the court order.

4. Petition from P.A.Natarajan at 1.11.96

5. Petition from Mr.Gurusamy and Anbalagan

6. Note for Health Officer dt. 5.11.96

Kind attention is invited to the reference cited above. The Honourable High Court, Chennai, in its judgment order dt. 17.7.96. As directed to inform both the parties and subsequently hear their respective statements, in support of their claims, and dispose off as per the relevant act governing the Corporation of Chennai.
In this connection a letter was addressed to both the parties of 24.10.96 to present before the Asst. Health Officer I the relevant documents in support of their respective claims. The complainant Mr. P.A.Natarajan has given a petition dt. 1.11.96 similarly Mr.Gurusamy appeared before me and presented his petition without any relevant documents in support of his claim.
On perusal of both arguments and petitions of the above two parties, it clearly implies that running of 40 H.P. Dhall Mill in a Primary Residential area (as certified by M.M.D.A.) is surely a source of Public Health Nuisance. However, he has mistakenly obtained licence from the year 1992 from Corporation of Chennai.
Therefore, in view of above facts the licence for the above Dhall Mill should be revoked by the competent authority.
Hence, orders of the Commissioner, Corporation of Chennai is requested to revoke and cancel the licence for the Dhall Mill running at No.8, Solaiappan Street, Ist Lane, Chennai-21 Division 9, Zone I for the year 1996-97.
For favour of information and necessary orders on 'A' please.

Sd/= Sd/=
Asst. Health Officer I Zonal Officer I Health Officer

Pl.cancel as
per law
Sd/= Sd/=
Deputy Commissioner (H) Commissioner

CCC
Pl. make entry and return / 17.2.97

Entry made about revoking
of licence / 17.2.97
AHO I - For further
follow up action
Health Officer / 27.2.97

S.I.9
As per the orders of
Commissioner's to
inform the Trade owners
urgently and take

n/a for issuing
revocation order / 17.2.97"
39. A perusal of the file and in particular the order passed by the Commissioner would demonstrate total non-application of mind and the Commissioner has not followed the directions issued by Jayarama Chouta, J., (as he then was), in W.P. Nos.18362/93, 4755/94 and 16075/94, P.A.NATARAJAN VS. TNEB & OTHERS dated 17.7.96. When the Commissioner has heard the parties, he should have passed a speaking order recording reasons for his conclusion.
40. When this Court has directed the Commissioner to consider the petitioners representation and claim after affording an opportunity of personal hearing and that opportunity of personal hearing has been afforded, statements have been recorded and the Assistant Health Officer has inspected the petitioner's mill, the minimum requirement being the Commissioner should have passed a speaking order. Instead in this case, the Commissioner has merely passed the order "Pl. cancel as per law".
41. Therefore, the Commissioner has not decided the issue nor there is an application of mind by the Commissioner, as the Commissioner has merely requested the Assistant Health Officer to cancel as per law. When the Commissioner has been directed to consider the representation, after hearing and thereafter pass an order, it is the Commissioner, who has to pass an order and a speaking order as well. This is the minimum requirement, which the Commissioner has failed to follow. It is incumbent on the part of the Commissioner to have examined the entire matter in detail and, thereafter, he should have taken a decision as he had already heard the petitioners and report of inspection was placed before him and he should have passed a speaking order by applying his mind and taking a decision.
42. But in this case, no such decision has been taken by the Commissioner. On the other hand, the Commissioner has requested the Assistant Health Officer to take action as per law. This is not a decision at all nor it could be said that it is an order passed by the Commissioner. Had the Commissioner had taken a decision in the note file and directed the Assistant Health officer to take further action, this Court would not be justified in directing the Commissioner to hold a fresh enquiry.
43. The minimum requirement of application of mind, passing a speaking order, recording reasons and arriving at a conclusion has not been exercised by the Commissioner. This warrants interference. Hence, on this short ground, the proceedings impugned deserves to be quashed and further directions are issued.
44. In the foregoing circumstances, W.P. No.5157 of 1997 is allowed. The impugned proceedings of the first and 2nd respondents are quashed and the direction issued by the Commissioner is quashed and the matter is remitted back to the Commissioner of Chennai City Municipal Corporation, who shall once again hear the petitioner de novo, permit the petitioner to make additional representations, if any, also cause inspection by the concerned Health Officer of Assistant Health Officer as the case may be, take into consideration of the directions passed by Ali Mohammed, J., in W.P. No. 14838 of 1995 & 2008 of 1995 and, thereafter, pass a speaking order recording reasons and communicate the same to the petitioner. It is needless to add that the Commissioner shall pass orders according to the statutory provisions of the City Municipal Corporation Act and the Rules and in the light of the law laid down by Ali Mohammed, J., and in the light the provisions of The Development Control Rules

framed under The Town and Country Planning Act.
45. It is for the Commissioner, Chennai City Municipal Corporation also to consider the request for renewal of licence for the subsequent period as well, but according to law. As the petitioners are having the benefit of interim orders, the petitioners shall be permitted to run the dhall mill till the Commissioner pass es a fresh order according to law. The Commissioner shall give due priority and pass orders according to law.
46. The other two writ petitions, namely, W.P. No.6212/98 and 5347/99 are closed. The parties shall bear their respective costs. Consequently, connected miscellaneous petition is closed.

Index : Yes
Internet : Yes
GLN

To

1. The Asst. Health Officer-I
Municipal Corporation of Madras
I-Circle, T.H. Road
Madras 21.

2. The Municipal Corporation
of Madras, rep. by its
Commissioner, Ripon Buildings
Part Town, Madras 3.

3. The Asst. Revenue Officer
Revenue Department
Corporation of Chennai
Chennai 600 003.